

1 GENERAL GOVERNMENT CABINET

2 KENTUCKY REAL ESTATE COMMISSION

3 (AMENDMENT)

4 201 KAR 11:121. Improper conduct.

5 RELATES TO: KRS 324.010(3), 324.160(4)(f), (l), (m), (o), (w), (v), (5), (7), 24 C.F.R. 3500

6 STATUTORY AUTHORITY: KRS 324.281(5), 324.282

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate
8 Commission to promulgate administrative regulations necessary to carry out and enforce the
9 provisions of KRS Chapter 324. This administrative regulation establishes behavior considered
10 improper conduct.

11 Section 1. The following shall be improper for any licensed agent:

12 (1) To accept or agree to accept, without written disclosure to the seller and buyer or lessor or
13 lessee on the purchase or lease contract, a referral fee from any person in return for directing a
14 client or customer to that person, or another, who provides or agrees to provide any goods,
15 service, insurance or financing related to a transaction involving real estate. This provision shall
16 not affect paying or receiving referral fees between licensed agents for brokerage services.

17 (2)(a) for the protection of the client or customer, to fail to disclose in writing to the licensee's
18 clients or customers the terms of any rebate or inducement. [~~To offer, either~~

1 through advertising, direct contact, or by others, to the general public, any prize, money, free
2 gift, rebate or thing of value, as an inducement, other than the situations listed in paragraph (b) of
3 this subsection.

4 (b) It shall not be improper conduct to disseminate information:

5 1. About the fee or other compensation the licensed agent agrees to charge for his or her
6 services; or

7 2. About inducements and rebates offered by the licensed agent or his or her clients or
8 customers [agent's client].

9 [~~(3) It shall not be improper conduct to:~~

10 ~~—(a) Advertise the fee or other compensation the licensed agent agrees to charge for his~~
11 ~~services;~~

12 ~~—(b) Advertise or distribute goods or services offered by others;~~

13 ~~—(c) Distribute marketing materials bearing the name or logo of the licensee or licensee's~~
14 ~~broker or company including but not limited to, matchbooks, magnets, pens, calculators,~~
15 ~~umbrellas, or calendars having a cost of not more than ten (10) dollars per item;~~

16 ~~—(d) Pay for refreshments or the costs of meals consumed by clients, customers or prospective~~
17 ~~clients or customers;~~

18 ~~—(e) Present any gift that does not exceed a cost of \$100 at or after closing to the participants in~~
19 ~~that closing;~~

20 ~~—(f) Offer a prize or free gift at an event such as a fair, trade exposition, or community event so~~
21 ~~long as such advertising is done only at the specific event and the cost of the prize or free gift~~
22 ~~does not exceed \$500 per event per branch office; or~~

~~—(g) Offer, in a one-on-one situation, to provide any thing of value for a client or customer, so long as it is disclosed in writing and signed by the licensee and his or her client or customer.]~~

(3) ~~[(4)]~~ To refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the agent, or with the agent's company, without the written and signed direction of the owner. Nothing herein shall be construed to permit otherwise unlawful discrimination.

(4) ~~[(5)]~~ To fail to satisfy one (1) or more of the following fiduciary duties owed to the licensee's client:

(a) Loyalty;

(b) Obedience to lawful instructions;

(c) Disclosure;

(d) Confidentiality;

(e) Reasonable care and diligence; or

(f) Accounting.

(5) ~~[(6)]~~ To advertise guaranteed sales plan without required disclosure of:

(a) Whether a fee is charged for participation;

(b) Whether the real estate shall meet qualifications for participation;

(c) Whether the purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party; and

(d) Whether the owner of the real estate shall purchase other real estate listed for sale by the licensee or his designee.

~~[1. In print advertising, that the disclosure shall be in letters at least twenty-five (25) percent the size of the largest letters in the advertisement; and~~

~~2. In radio advertising, that the disclosure shall be verbal and clearly understandable; and~~

~~3. In television advertising, that the disclosure shall:~~

~~a. Be verbal and clearly understandable; or~~

~~b. Be written and appearing on the screen at least three (3) seconds for the first line of lettering and one (1) second for each additional line of lettering and in letters:~~

~~(i) Which are eighteen (18) video scan lines in size for letters which are all upper case; or~~

~~(ii) Which are twenty four (24) video scan lines in size for upper case capitals when upper case capitals and lower case letters are used.]~~

~~(6) [(7)] To violate a statute or administrative regulation governing brokers, sales associates, or real estate transactions.~~

~~(7) [(8)] To serve in the dual capacity of a real estate licensee and loan originator, if the real estate licensee, while acting in that capacity:~~

~~(a) Fails to disclose this dual role in writing and fails to indicate in that disclosure that the licensee will receive additional payment for the loan origination activities;~~

~~(b) Fails to contact the Department of Financial Institutions to register and pay the one (1) time fee for engaging in loan origination, if the licensee is engaged in loan origination as a part of his or her real estate activities to assist his or her real estate clients in obtaining financing; or~~

~~(c) Receives payment but fails to perform the requirement in subparagraph 1 of this paragraph, plus at least five (5) of the remaining thirteen (13) specific activities listed below, as outlined by the Department of Housing and Urban Development and as set out in the Real Estate Settlement Procedures Act Statement of Policy 1999-1:~~

~~1. Taking information from the borrower and filling out the application;~~

2. Analyzing the prospective borrower's income and debt and pre-qualifying the prospective borrower to determine the maximum mortgage that the prospective borrower can afford;
 3. Educating the prospective borrower in the home buying and financing process, advising the borrower about the different types of loan products available, and demonstrating how closing costs and monthly payments could vary under each product;
 4. Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process;
 5. Initiating/ordering verifications of employment and verifications of deposit;
 6. Initiating/ordering requests for mortgage and other loan verifications;
 7. Initiating/ordering appraisals;
 8. Initiating/ordering inspections or engineering reports;
 9. Providing disclosures (truth in lending, good faith estimate, others) to the borrower;
 10. Assisting the borrower in understanding and clearing credit problems;
 11. Maintaining regular contact with the borrower, realtors, lender, between application and closing to appraise them of the status of the application and gather any additional information as needed;
 12. Ordering legal documents;
 13. Determining whether the property was located in a flood zone or ordering such service; and
 14. Participating in the loan closing;
- (d) Requests or receives compensation that is not commensurate with the actual work performed; or
- (e) Requests or receives compensation for work that is not actually performed by him or her.

1 (8) ~~[(9)]~~ A broker licensed in Kentucky to aid, abet, or otherwise assist any individual who is
2 not actively licensed in Kentucky in the practice of brokering real estate in this state. This
3 prohibition shall include a Kentucky broker assisting an unlicensed individual with the listing,
4 selling, leasing or managing of any Kentucky property or assisting an unlicensed individual in
5 representing any buyer or lessee seeking property in Kentucky. An unlicensed individual shall
6 include an individual who may be affiliated with a national franchise and may have a license in
7 another state but who does not have an active Kentucky license.

Date

Sue Teegarden, Chairperson
Kentucky Real Estate Commission

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2005 at 1:00 p.m., local time, in the “Ellis Room” at the Holiday Inn-Hurstbourne located at 1325 S. Hurstbourne Parkway in Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone: (502) 429-7250, Fax: (502) 429-7246.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 201 KAR 11:121

Contact person: Y. Denise Payne Wade

- (1) Provide a brief summary of:
 - a. What this administrative regulation does: This regulation outlines what actions constitute “improper conduct” under the license laws.
 - b. The necessity of this administrative regulation: This regulation is necessary to further outline what activities would fall under KRS 324.160(4)(v), the statute that prohibit improper conduct by licensees.
 - c. How this administrative regulation conforms to the content of the authorizing statutes: This regulation outlines certain activities that are prohibited under KRS 324.160(4)(v).
 - d. How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation makes it clear to licensees and the public about what activities a licensee may and may not perform in order to comply with the mandate of KRS 324.160(4)(v).
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - a. How the amendment will change this existing administrative regulation: This amendment will allow licensees to offer rebates and inducements to their clients or customers, when licensees disclose to them, in writing, the terms of the rebates or inducements.
 - b. The necessity of the amendment to this administrative regulation: This amendment allows rebates and inducements if they are in writing.
 - c. How the amendment conforms to the content of the authorizing statutes: The amendment clarifies what will be allowed under the enabling statutes, with the required written disclosure.
 - d. How the amendment will assist in the effective administration of the statutes: Promulgating a regulation allowing rebates and inducements and requiring them to be in writing will avoid confusion, protect the public and prevent uneven regulation of the industry by the Kentucky Real Estate Commission, since without the regulation there would be a gap in enforcement during which time rebates and inducements could be offered verbally.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees will be subject to this regulation.
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the

- change, if it is and amendment: This amendment will allow rebates and inducements that licensees disclose, in writing, to clients and customers.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - a. Initially: None
 - b. On a continuing basis: None
 - (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be needed.
 - (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No fees will be needed.
 - (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees will be established.
 - (9) TIERING: Is tiering applied? Explain why tiering was or was not used.) Tiering was not used because this regulation should not disproportionately affect any particular group of people.